RAJOO RAMASAMY

v.

INSPECTOR-GENERAL OF POLICE & ORS.

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
MOHD. YUSOFF MOHAMED SCJ
GUNN CHIT TUAN SCJ
[CRIMINAL APPEAL NO. 05-167-89]
16 FEBRUARY 1990

CONSTITUTIONAL LAW: *Appeal - Representation to Advisory Board under Article 151(1)(a) of the Federal Constitution - Whether the Yang di-Pertuan Agong can extend period of representation after the requisite period - Interpretation of Federal Constitution - Article 160(1) - Ambit thereof.*

The appellant was detained under s. 6(1) of the dangerous drugs (Special Preventive Measures) Act 1985 for a period of 2 years (w.e.f. 13 May 1988) and accordingly made his representations under Article 151(1)(a) of the Federal Constitution which was fixed for hearing on 20 July 1988.

However on 14 July 1988, by a concurrent application, the appellant succeeded in an application for *habeas corpus* and was in turn released. The respondents appealed against this decision.

Subsequently on 17 September 1988, the appellant was rearrested pending enquiries under s. 3(1) of the act and was detained under another order pursuant to s. 6(1) of the act for a period of 2 years (w.e.f. 15 November 1988). A second application for *habeas corpus* was filed in the Penang High Court.

On 31 January 1989, the Supreme Court quashed the decision of the High Court and set aside the order for *habeas corpus* as against the detention order.

Following this decision, the Minister revoked the 2nd detention order

On 28 February 1989, pursuant to Article 151(1)(b) of the Constitution, the Yang di-Pertuan Agong allowed the extension of time of 10 months and 9 days w.e.f. 23 May 1988 within which the Advisory Board had to consider the representation made by the appellant and in turn made its representations to the Yang di-Pertuan Agong. Having complied with this, the Yang di-Pertuan Agong confirmed the 1st detention order.

The issue before the Court is whether Article 151(1)(b) of the Constitution empowers the Yang di-Pertuan Agong to allow the extension of time for the Advisory Board to consider representations and make representations to Yang di-Pertuan Agong after the period of 3 months had expired.

For the purpose of interpreting the Federal Constitution, the learned Judge examined Article 160(1) and the 11th schedule to the Constitution. The learned Judge held that though s. 39 of the Interpretation and General Clauses Ordinance is excluded from the schedule, he purports to invoke s. 45 and s. 109 of the Consolidated Interpretation Acts 1947 and 1967 which he concluded permits the exercise of an extension of time under Article 151(1)(b).

Held:

[1] By virtue of ss. 2(1) and 2(2) of the Consolidated Interpretation Ordinance, ss. 45 and 109 cannot be used to empower an extension of time under Article 151(1)(b).

[2] The interpretation of the constitution is limited to Article 160 which prescribes that the provisions of the 1948 Ordinance as specified in the 11th Schedule shall be used for that purpose.

[3] An extension of time under Article 151(1)(b) of the Federal Constitution can only be granted before the expiry of the period of 3 months.

[Appeal allowed.]

Legislation referred to:

Interpretation Acts 1948 and 1967, ss. 2(1), (2), 45, 109
Dangerous Drugs Act (Special Preventive Measures) Act 1985, ss. 3(1), 6(1)
Federal Constitution, arts. 151(1)(a), (b), 160(1)
Interpretation and General Clauses Ordinance 1948, s. 39

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondents - Balia Yusof bin Wahi; SFC

JUDGMENT

Hashim Yeop Sani CJ (Malaya):

The appellant had been detained under powers conferred by s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act) for a period of two years with effect from 13 May 1988 at the Pusat Pemulihan Akhlak, Muar, Johor. On 22 May 1988 the appellant made his representations to the Advisory Board under the provisions of Article 151(1)(a) of the Federal Constitution. The Advisory Board then fixed the hearing of his representations on 20 July 1988. In the meanwhile, however, pursuant to his application for a writ of *habeas corpus* the High Court sitting in Kuala Lumpur granted his application for *habeas corpus* on 14 July 1988 and directed his release on the same day. The respondents, however, appealed to the Supreme Court against the High Court's decision.

The appellant's freedom was shortlived for while the appeal was pending he was rearrested on 17 September 1988 pending enquiries under s. 3(1) of the Act. On 14 November 1988 he was detained under another order (the second detention order) under s. 6(1) of the Act for a period of two years commencing from 15 November 1988. The appellant then filed his second application for a writ of *habeas corpus*, this time in the High Court, Pulau Pinang.

On 30 January 1989 the Supreme Court, after hearing the appeal of the appellant, quashed the decision of the High Court Kuala Lumpur, setting aside the order for the grant of *habeas corpus*. Following the Supreme Court's decision the minister revoked the second detention order on 24 February 1989.

On 28 February 1989 pursuant to Article 151(1)(b) of the Federal Constitution the Yang di-Pertuan Agong allowed the extension of time of 10 months and 9 days commencing from 23 May 1988 within which the Advisory Board had to consider the representations made by the appellant and to make its recommendations thereon to the Yang di-Pertuan Agong. The Advisory Board heard his representations and on 27 March 1989 made its recommendations to the Yang di-Pertuan Agong. In accordance with these recommendations the Yang di-Pertuan Agong confirmed the first detention order made against the appellant.

For convenience the provision of Article 151(1)(b) of the Constitution is reproduced below:

> 151(1) Where any law or ordinance made or promulgated in pursuance of this part provides for preventive detention:
>
> (b) No citizen shall continue to be detained under that law or ordinance unless an Advisory Board constituted as mentioned in clause (2) has considered any representations made by him under para. (a) and made recommendations thereon to the Yang di-Pertuan Agong within three months of receiving such representations, or within such longer period as the Yang di-Pertuan Agong may allow.

The sole issue here is whether Article 151(1)(b) of the Federal Constitution gives power to the Yang di-Pertuan Agong to allow the extension of time for the Advisory Board to consider the representations and to make the recommendations under that Article **after** the period of 3 months has expired.

Article 160(1) of the Constitution states as follows:

> (1) The Interpretation and General Clauses Ordinance 1948, **as in force immediately before Merdeka Day shall, to the extent specified in the Eleventh Schedule**, apply for the interpretation of this Constitution as it applies for the interpretation of any written law within the meaning of that Ordinance, but with the substitution of references to the Yang di-Pertuan Agong for references to the High Commissioner.

In the Eleventh Schedule to the Constitution a number of provisions from the Interpretation and General Clauses Ordinance 1948 (the 1948 Ordinance) are reproduced and specified for the purpose of interpretation of the Constitution. However s. 39 of the 1948 Ordinance is excluded from the schedule.

Section 39 of the 1948 Ordinance reads as follows:

> 39. Where in any written law a time is prescribed for doing any act or taking any proceeding and power is given to a Court or other authority to extend such time, unless the contrary intention appears the power may be exercised by the Court or other authority although the application for the same is not made until after the expiration of the time prescribed.

What was argued before the learned Judge was that because s. 39 of the 1948 Ordinance was excluded from the Eleventh Schedule to the Constitution there is no power to extend time after the expiry of the period prescribed in Article 151(1)(b) of the Constitution. That argument was apparently accepted by the learned Judge.

However, the learned Judge went further and purporting to invoke s. 45 and s. 109 of the Consolidated Interpretation Acts 1948 and 1967 (Revised 1989) concluded that there is such power to extend the time under Article 151(1)(b) of the Constitution.

Sections 2(1) and 2(2) of the Consolidated Interpretation Acts read as follows:

> 2. (1) Subject to this section, Part I of this Act shall apply for the interpretation of and otherwise in relation to:
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> (a) this Act and all Acts of Parliament enacted after 18 May 1967;
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> (b) all laws, whether enacted before or after the commencement of this Act, revised under the Revision of Laws Act 1968;
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> (c) all subsidiary legislation made under this Act and under Acts of Parliament enacted after the commencement of this Act;

(d) all subsidiary legislation, whether made before or after the commencement of this Act, revised under the Revision of Laws Act 1968;

(e) all subsidiary legislation made after 31 December 1968, under the laws revised under the Revision of Laws Act 1968.

2. (2) Part I shall not apply for the interpretation of or otherwise in relation to any written law not enumerated in subsection (1).

It can be observed that s. 45 of the Consolidated Acts comes under Part I and therefore cannot by virtue of s. 2(2) of the Consolidated Acts apply for the interpretation of the Constitution. It is also to be observed that s. 109 of the Consolidated Acts appears in Part II of the Consolidated Acts and is a reproduction of s. 39 of the old 1948 Ordinance.

Thus what we have now is that Article 60 of the Constitution expressly prescribes that the provisions of the 1948 Ordinance *as specified* in the Eleventh Schedule shall apply for the interpretation of the Constitution. Against that we also have the provisions of the Consolidated Interpretation Acts which are not applicable for the interpretation of the Constitution.

Encik Balia Yusof, learned Senior Federal Counsel, has urged us to consider the unique background of this case which had in fact necessitated the Yang di-Pertuan Agong to allow an extension of 10 months and 9 days purporting to act under the said Article of the Constitution. But we cannot overlook the injunction contained in Article 151(1)(b) of the Constitution which expressly provides that **no citizen shall continue to be detained** unless the Advisory Board has considered the representations and has made recommendations to the Yang di Pertuan Agong within 3 months of receiving the representations. The exception is only where there is an extension of time granted under that clause of the Article. Reading that clause as a whole it is implicit that if any extension is to be granted it should be granted before the expiry of the period of 3 months because the express injunction is that no person shall otherwise continue to be detained.

Article 151(1)(b) of the Constitution in its original version carried no power to extend the period beyond the three months prescribed Parliament amended that Article in 1976 to include the power to extend the period under that clause. Parliament should have then also amended the Eleventh Schedule to the Constitution to insert s. 39 of the 1948 Ordinance to enable the power to extend time to be exercised after the expiry of period prescribed. It is difficult to construe that there is power to extend the time after the expiry of the 3 months period when s. 39 of the 1948 Ordinance was expressly left out from the Eleventh Schedule to the Constitution.

The appeal was accordingly allowed. Application for writ of *habeas corpus* was granted.

Also found at [1990] 1 CLJ 888